

TAB

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD



Baxter International Inc.,)	
)	
Opposer,)	
)	
v.)	Opposition No.: 91150298
)	Application No. 76/151,380
Inviro Medical Devices, Ltd.)	
)	
Applicant.)	

08-29-2002
U.S. Patent & TMO/TM Mail Rcpt Dt. #26

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TRADEMARK TRIAL AND
APPEAL BOARD

**CONSENTED MOTION TO AMEND
NOTICE OF OPPOSITION**

In accordance with Federal Rule of Civil Procedure 15(a) and T.B.M.P. §§ 507.01 and 507.02, Opposer, Baxter International, Inc., with the consent of Inviro Medical Devices, Ltd., moves this Court to amend its Notice of Opposition, originally filed on October 29, 2001. Opposer originally filed a *Motion for Leave to Amend its Notice of Opposition*, on July 18, 2002, which was not consented to by Applicant, however, Applicant has consented to this motion because Opposer has agreed to remove reference to its PLASMALINK mark from the Notice of Opposition. Opposer is hereby withdrawing, in its entirety, Baxter's prior *Motion for Leave to Amend*, as filed on July 18, 2002.

In accordance with T.B.M.P. § 507.01, a signed copy of the proposed Amended Notice of Opposition is attached hereto as Exhibit 1.

1. Opposer's original Notice of Opposition, which objected to registration of Applicant's ULTRALINK mark, was based on Opposer's numerous INTERLINK registrations, as well as several other "LINK" registrations and applications owned by

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Opposer. Although Opposer's central basis for opposing the application was its INTERLINK mark, it also included reference to an objection based on its family of marks.

2. In order to streamline the issues in this Opposition, Opposer wishes to amend its opposition to delete reference to several of its LINK registrations and applications and its "family of marks." Instead, Opposer seeks to continue this Opposition based solely on its INTERLINK registrations.

3. The discovery period is currently open until September 30, 2002 in this Opposition. Both parties have exchanged some initial discovery.

4. On August 23, 2002, Applicant's counsel provided written confirmation of its consent to this motion.

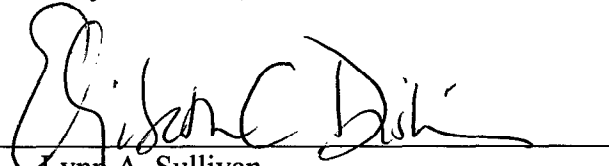
5. In this case, there is no foreseeable harm to Applicant if Opposer is granted this request to file an amended Notice of Opposition. To the contrary, granting this amendment will streamline the issues and process for the Board and Applicant.

WHEREFORE, Opposer, with Applicant's consent, respectfully moves this Board to grant its motion to amend its Notice of Opposition.

Respectfully submitted,

Date:

Aug 23, 2002



Lynn A. Sullivan

Elizabeth C. Diskin

LEYDIG, VOIT & MAYER, LTD.

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312/616-5600

Attorneys for Opposer

EXHIBIT 1

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Baxter International Inc.,)	
)	
Opposer,)	
)	
v.)	Opposition No. 91150298
)	Serial No. 76/151,380
Inviro Medical Devices Ltd.,)	
)	
Applicant.)	

AMENDED NOTICE OF OPPOSITION

In the matter of application Serial No. 76/151380 for registration of the alleged mark ULTRALINK in International Class 10 by Inviro Medical Devices, Ltd. (hereinafter "Applicant"), which was published in the Official Gazette on August 7, 2001, at page TM 222, Baxter International Inc. (hereinafter "Opposer"), a corporation of Delaware, located at One Baxter Parkway, Deerfield, Illinois 60015, who previously timely filed a Request for Extension to Oppose this application, believes it will be damaged by the registration, and therefore opposes the same.

As grounds for the opposition, Opposer alleges as follows:

1. Applicant seeks to register ULTRALINK as a trademark in International Class 10 for "medical devices, namely cannulae, medical, hypodermic, aspiration and injection needles, medical, hypodermic, aspiration and injection syringes, connectors, ports, catheters and injection sites" as evidenced by the publication of said mark in the Official Gazette on page TM 222 of the August 7, 2001 issue.

2. Opposer has for many years been engaged in the manufacture, marketing and sale of infusion apparatus and instruments to the medical industry under the mark INTERLINK.

3. Opposer owns (3) INTERLINK registrations under Registration No. 1,721,708 for “medical apparatus; namely, fluid administration set, extension set, secondary medication set, catheter extension set, y-type catheter extension set and IV connector loop set, all sets primarily composed of tubing, drip chamber, clamps, spike, hangers, finger guards, drop formers, injection sites, flow regulators, connectors, heparin locks, locking adapters, and tip protectors”; No. 1,812,016 for “medical apparatus, namely cannula”; No. 1,821,178 for “medical apparatus, namely syringes, drug vials, drug vial stoppers and drug vial adapters”; all in International Class 10. The foregoing INTERLINK registrations are valid, subsisting and are all incontestable registrations. Copies of the Registration Certificates are attached hereto as Exhibit A.

4. Based on its use of the INTERLINK marks, Opposer has developed substantial good will therein and public recognition thereof, and said marks have come to identify Opposer’s products to the medical infusion market and the relevant purchasing public.

5. On information and belief, Opposer’s INTERLINK mark is one of the best known brands for infusion products. Opposer’s INTERLINK products have been in the marketplace for more than 10 years.

6. The products recited in pending application U.S. Serial No. 76/151380 and upon which Applicant apparently intends to use the pending mark, likewise are directed to the same medical infusion products market and concern identical goods to one of

Opposer's INTERLINK products, namely cannulae, injection syringes, connectors and injection sites.

7. Opposer's goods and Applicant's respective goods are both used in connection with infusion of a fluid into a patient's bloodstream. The products are identical and the nature of the use of the products are identical.

8. Upon information and belief, Applicant will be promoting and marketing its ULTRALINK product to the same hospitals, acute-care facilities, and clinics as Opposer.

9. Upon information and belief, Applicant's product would be marketed and promoted at the same trade shows and through the same trade publications, as where Opposer's INTERLINK products are and have been marketed and promoted for years.


10. Upon information and belief, Opposer's goods and Applicant's respective goods are directed to the same segment of the same industry and through the same trade channels. Such customers would likely be familiar with Opposer's goods and would likely believe that Applicant's goods were somehow related to, complementary to, or otherwise authorized by Opposer.

11. Applicant's potential mark ULTRALINK is very similar in sight, sound and commercial impression to Opposer's registered marks INTERLINK, is identical in product and nature of the product use, will be marketed and sold to the same industry and through the same trade channels, and is therefore, likely to cause confusion or mistake, or to deceive, within the meaning of Section 2(d) of the Lanham Act, 15 U.S.C. Section 1052(d).

WHEREFORE, Opposer respectfully requests that this opposition be sustained and that the registration of pending U.S. Serial No. 76/151380 be denied. The applicable fee of \$300.00 to file this opposition was submitted with the original Notice of Opposition.

Date: Aug. 23 2002

Respectfully submitted,

By: 

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Suite 4900
Chicago, Illinois 60601
(312) 616-5600

Attorneys for Opposer
Baxter International Inc.

EXHIBIT A

Int. Cl.: 10

Prior U.S. Cl.: 44

United States Patent and Trademark Office

Reg. No. 1,821,178

Registered Feb. 15, 1994

**TRADEMARK
PRINCIPAL REGISTER**

INTERLINK

BAXTER INTERNATIONAL INC. (DELAWARE
CORPORATION)
ONE BAXTER PARKWAY
DEERFIELD, IL 60015

FOR: MEDICAL APPARATUS; NAMELY, SY-
RINGES, DRUG VIALS, DRUG VIAL STOP-
PERS AND DRUG VIAL ADAPTERS, IN
CLASS 10 (U.S. CL. 44).

FIRST USE 2-8-1990; IN COMMERCE
2-8-1990.

OWNER OF U.S. REG. NO. 1,721,708.

SER. NO. 74-402,606, FILED 6-17-1993.

JULIA A. HARDY, EXAMINING ATTORNEY

Int. Cl.: 10

Prior U.S. Cl.: 44

United States Patent and Trademark Office

Reg. No. 1,812,016

Registered Dec. 21, 1993

**TRADEMARK
PRINCIPAL REGISTER**

INTERLINK

**BAXTER INTERNATIONAL INC. (DELAWARE
CORPORATION)
ONE BAXTER PARKWAY
DEERFIELD, IL 60015**

**FIRST USE 10-2-1990, IN COMMERCE
10-2-1990.**

SER. NO. 74-379,211, FILED 4-15-1993.

**FOR: MEDICAL APPARATUS; NAMELY,
CANNULA, IN CLASS 10 (U.S. CL. 44).**

**ESTHER A. BORSUK, EXAMINING ATTOR-
NEY**

Int. Cl.: 10

Prior U.S. Cl.: 44

United States Patent and Trademark Office

Reg. No. 1,721,708

Registered Oct. 6, 1992

**TRADEMARK
PRINCIPAL REGISTER**

INTERLINK

BAXTER INTERNATIONAL INC. (DELAWARE
CORPORATION)
ONE BAXTER PARKWAY
DEERFIELD, IL 60015

FOR: MEDICAL APPARATUS; NAMELY,
FLUID ADMINISTRATION SET, EXTENSION
SET, SECONDARY MEDICATION SET, CATH-
ETER EXTENSION SET, Y-TYPE CATHETER
EXTENSION SET AND I.V. CONNECTOR
LOOP SET, ALL SETS PRIMARILY COM-
POSED OF TUBING, DRIP CHAMBER,

CLAMPS, SPIKE, HANGERS, FINGER
GUARDS, DROP FORMERS, INJECTION
SITES, FLOW REGULATORS, CONNECTORS,
HEPARIN LOCKS, LOCKING ADAPTERS,
AND TIP PROTECTORS, IN CLASS 10 (U.S. CL.
44).

FIRST USE 10-2-1990; IN COMMERCE
10-2-1990.

SER. NO. 74-188,893, FILED 7-26-1991.

LINDA E. BLOHM, EXAMINING ATTORNEY

CERTIFICATE OF MAILING

I hereby certify that this **CONSENTED MOTION TO AMEND NOTICE OF OPPOSITION** (along with any documents referred to as being attached or enclosed) is being deposited with the United States Postal Service as first class mail in an envelope addressed to: Assistant Commissioner for Trademarks, 2900 Crystal Drive, **Box TTAB-NO FEE**, Arlington, Virginia 22202-3513 on August 23, 2002.

Date: August 23, 2002

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of
CONSENTED MOTION TO AMEND NOTICE OF OPPOSITION (along with
any documents referred to as being attached or enclosed) was sent on this 23rd day of
August, 2002, via United States Mail, first class postage prepaid, to:

Duane M. Byers
Nixon & Vanderhye P.C.
1100 North Glebe Road, 8th Floor
Arlington, VA 22202-4714